



Submission to the UN Universal Periodic Review regarding the protection of the rights of LGBTI persons in the Solomon Islands

24th session of the Universal Periodic Review

January–February 2016

1. Executive Summary

- 1.1 Kaleidoscope Australia Human Rights Foundation (**Kaleidoscope**) is a non-government organisation that works with local activists to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons in the Asia-Pacific Region. Kaleidoscope has prepared this report for the United Nations Human Rights Council (**UNHRC**) in respect of the Solomon Islands.
- 1.2 This report highlights instances where the legal framework of the Solomon Islands is failing to adequately protect the human rights of LGBTI persons and where the Solomon Islands may not be meeting its obligations under international human rights law. It makes four recommendations for steps the Solomon Islands should take to better promote and protect the rights of LGBTI persons.
- 1.3 There are several areas where the Solomon Islands falls short of its obligations under international human rights law in relation to LGBTI persons. In particular, the Solomon Islands continues to criminalise consensual sexual relations between persons of the same sex and there are no laws prohibiting discrimination against a person based on their sexual orientation or gender identity.

2. Positive steps taken by Solomon Islands

- 2.1 Since the last Universal Periodic Review (**UPR**) of the Solomon Islands in May 2011, the Solomon Islands has not undertaken any legal reforms to protect the rights of LGBTI people.
- 2.2 At the UPR in 2011, the Solomon Islands received four recommendations to repeal laws criminalising sexual relations between consenting adults of the same sex.¹ The Solomon Islands also received a broader recommendation to “repeal all discriminatory provisions relative to lesbian, gay, bisexual and transgender people”².
- 2.3 The Solomon Islands rejected all these recommendations. Its delegation noted that the cultural context of Solomon Islands’ society did not condone same-sex relationships and that any commitment to decriminalising sexual relations between consenting adults of the same sex would “require thorough national consultations to address Christian doctrines and cultural perspectives on the issue”.³ However, during the adoption of its 2011 UPR report by the UNHRC, the Solomon Islands did note that a budget for such consultations would be allocated as part of the 2012 national budget.⁴
- 2.4 Since then, the Solomon Islands has not taken any active steps to implement the recommendations or bring about broader LGBTI rights reform, or even to hold consultations on such reform.

¹ United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Solomon Islands*, 18th sess, UN Doc A/HRC/18/8 (11 July 2011) [80.38], [81.49]-[81.51].

² United Nations Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Solomon Islands*, 18th sess, UN Doc A/HRC/18/8 (11 July 2011) [81.49].

³ Solomon Islands Country Statement at the United Nations Human Rights Council, 18th sess (21 September 2011), p. 4 <http://www.upr-info.org/sites/default/files/document/solomon_islands/session_11_may_2011/solomonislandplenarystatement2011.pdf>.

⁴ ‘Solomon Islands’, ARC International <<http://arc-international.net/global-advocacy/universal-periodic-review/s/solomon-islands/>>.

3. Obligations under international law to protect LGBTI persons from discrimination

- 3.1 Although the Solomon Islands has not ratified some of the significant human rights treaties which form the foundation of international human rights law, it has ratified:
- (a) the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*;
 - (b) the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*;
 - (c) the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* and the *Optional Protocol to the Convention on the Elimination of Discrimination against Women (CEDAW – OP)*;
 - (d) the *Convention on the Rights of the Child (CRC)*; and
 - (e) the *Convention on the Rights of Persons with Disabilities (CRPD)*.
- 3.2 The ICESCR, CEDAW and CRC do not explicitly prohibit discrimination against a person based on sexual orientation or gender identity. However, the non-discrimination provisions within these treaties have been interpreted by the relevant treaty bodies as obliging states-parties to prevent discrimination against persons on the grounds of sexual orientation or gender identity. For example:
- (a) Article 2(2) of the ICESCR requires States Parties to guarantee that the rights enunciated in the ICESCR are exercised without discrimination of any kind on a range of grounds. The Committee on Economic, Social and Cultural Rights has specifically stated that sexual orientation and gender identity are recognised as prohibited grounds of discrimination under Article 2(2).⁵
 - (b) Article 2 of the CEDAW requires States Parties to condemn discrimination against women in all forms. The Committee on the Elimination of All Forms of Discrimination Against Women issued a general recommendation stating that the discrimination of women based on sex and gender is inextricably linked with sexual orientation and gender identity.⁶
 - (c) Article 2 of the CRC requires States Parties to take all appropriate measures to ensure that children are protected against all forms of discrimination, including on the ground of sex or “other status”. The Committee on the Rights of the Child has stated that sexual orientation and gender identity are included within the non-discrimination grounds in Article 2.⁷ Significantly, the obligations on States Parties in Article 2 of the CRC extend to a child's parent or legal guardian, meaning that a State Party cannot

⁵ United Nations Committee on Economic, Social and Cultural Rights, *General Comment No 20 – Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc E/C.12/GC/20 (2009) [32].

⁶ United Nations Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the core obligations of State parties under article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women*, UN DOC CEDAW/C/GC/28 (16 December 2010) [18].

⁷ United Nations Committee on the Rights of the Child, *General Recommendation No. 4 on adolescent health and development in the context of the Convention of the Rights of the Child*, UN Doc CRC/GC/2003/4 (1 July 2003) [6]; United Nations Committee on the Rights of the Child, *General Recommendation No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (Art. 24)*, UN Doc CRC/C/GC/15 (17 April 2013) [8].

discriminate against a child on the basis of their parent's or legal guardian's sexual orientation or gender identity.⁸

- 3.3 Accordingly, the Solomon Islands has obligations under its existing international law commitments to prevent and prohibit discrimination against women and children, and a child's parent or legal guardian, on the basis of sexual orientation and gender identity. Further, the Solomon Islands has obligations not to discriminate on the basis of sexual orientation and gender identity with regard to economic, social and cultural rights.

4. Criminalisation of sexual relations between persons of the same sex

- 4.1 The laws of the Solomon Islands do not comply with the state's obligations under international law in respect of the human rights of LGBTI persons. The most significant example of this is the continued criminalisation of consensual same-sex sexual relations.

- 4.2 The Solomon Islands' *Penal Code* contains several provisions which criminalise consensual sexual relations between persons of the same sex, in violation of its obligations under international human rights law:

- (a) Section 160 punishes the commission of "unnatural offences", which includes "buggery with another person or with an animal" and "permit[ting] a male person to commit buggery with him or her" with imprisonment for 14 years;
- (b) Section 161 punishes attempts to commit "unnatural offences" with imprisonment for 7 years; and
- (c) Section 162 punishes acts of "gross indecency" between persons of the same sex, whether done in public or private, including the procurement of others to engage in these acts with imprisonment for 5 years.

- 4.3 As outlined in paragraph 2.3 above, during its UPR session in 2011, the Solomon Islands indicated its preparedness to allocate a budget for national consultations regarding the potential decriminalisation of consensual relations between persons of the same sex. However, the Solomon Islands has not made any progress in carrying out national consultations and ultimately in repealing sections 160 to 162 of the *Penal Code*.

Recommendation 1

The Solomon Islands should repeal laws criminalising sexual relations between consenting adults of the same sex, as expressed in sections 160 to 162 of the *Penal Code*.

5. Failure to protect LGBTI people against discrimination

- 5.1 The discrimination against LGBTI persons in the Solomon Islands extends beyond the criminalisation of same-sex sexual activity.

⁸ United Nations General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

- 5.2 The Solomon Islands has no laws prohibiting discrimination on the basis of sexual orientation and gender identity/expression in all areas of public life, including employment, education, health care and the provision of goods and services.

Recommendation 2

The Solomon Islands should enact comprehensive anti-discrimination legislation that prohibits discrimination on the grounds of sexual orientation and gender identity/expression in all areas of public life.

- 5.3 Chapter II of the Solomon Islands' Constitution contains a "Bill of Rights"⁹, which is the definitive collection of legal freedoms and protections of the people of the Solomon Islands. It makes detailed provision for rights and freedoms and the exceptions to which they are subject.
- 5.4 Chapter II, Section 15 specifically deals with the equality of persons and freedom from discrimination.¹⁰ Chapter II, Section 15(4) states that:

[i]n this section, the expression 'discriminatory' means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons another such description.¹¹

- 5.5 Sexual orientation and gender identity are notably absent from the list of non-discrimination grounds in Chapter II, Section 15(4) of the Constitution.
- 5.6 Chapter VI, Part II, Section 61 of the Constitution provides for the amendment of Chapter II through an Act of Parliament provided it is supported at the final voting on two separate readings in Parliament by the votes of not less than three-quarters of all the members of Parliament.

Recommendation 3

The Solomon Islands should amend its Constitution to include sexual orientation and gender identity as prohibited grounds for discrimination.

6. Ratification of key human rights treaties

- 6.1 The Solomon Islands has not ratified key human rights treaties, including, but not limited to, the *International Covenant on Civil and Political Rights (ICCPR)*. The ICCPR, along with the ICESCR (which the Solomon Islands has ratified), form the cornerstone of the international legal framework for the protection of human rights. The ratification of the ICCPR will assist in strengthening the Solomon Islands' obligations under international law,

⁹ Chapter II, *The Constitution of Solomon Islands* (1978).

¹⁰ Chapter VI, Section 15 *The Constitution of Solomon Islands* (1978).

¹¹ Chapter VI, Section 15(4) *The Constitution of Solomon Islands* (1978).

particularly the anti-discrimination provisions, in respect of the protection of the human rights of LGBTI persons.

- 6.2 At its previous UPR in 2011, the Solomon Islands indicated that it was “working on the issue” of ratifying human rights conventions and would establish a “national treaties advisory committee” to look at this issue in stages, due to its significance and the need to obtain the serious consideration and endorsement of the Government.¹² However, since the last UPR, there appears to have been no further progress made.

Recommendation 4

The Solomon Islands should ratify the International Covenant on Civil and Political Rights (and its Optional Protocols).

7. Summary of recommendations

- 7.1 The continuing criminalisation of sexual activity between persons of the same sex, as well as the failure to protect LGBTI persons from discrimination, constitute violations by the Solomon Islands of a number of rights under international human rights law, including the right to equality and non-discrimination under treaties already ratified by the Solomon Islands.
- 7.2 Accordingly, we urge the UNHRC to make the following recommendations to the Solomon Islands:

Recommendation 1: The Solomon Islands should repeal laws criminalising sexual relations between consenting adults of the same sex, as expressed in sections 160 to 162 of the Penal Code.

Recommendation 2: The Solomon Islands should enact comprehensive anti-discrimination legislation that prohibits discrimination on the grounds of sexual orientation and gender identity/expression in all areas of public life.

Recommendation 3: The Solomon Islands should amend its Constitution to include sexual orientation and gender identity as prohibited grounds for discrimination.

Recommendation 4: The Solomon Islands should ratify International Covenant on Civil and Political Rights (and its Optional Protocols).

For further information or clarification regarding any matter in this report, please contact Dr Paula Gerber, President of Kaleidoscope Australia Human Rights Foundation via president@kaleidoscopeaustralia.com

¹² United Nations Human Rights Council, *Report of the Working Group on the Universal Period Review: Solomon Islands*, 18th sess, UN Doc A/HRC/18/8 (11 July 2011) [77].